[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-025 and 52-026; NRC-2008-0252]

Southern Nuclear Operating Company, Inc.

Vogtle Electric Generating Plant Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) is issuing an exemption from the Commission's regulations in response to a November 5, 2021, request, as supplemented by letter dated November 12, 2021, from Southern Nuclear Operating Company, Inc. (SNC), as applicable to Vogtle Electric Generating Plant (VEGP) Units 3 and 4. Specifically, SNC requested a schedular exemption from NRC requirements, which require, in part, a holder of a combined license (COL) after the Commission finds that the acceptance criteria in the COL are met for the unit to implement all fitness for duty (FFD) requirements, except for certain FFD requirements for construction, before the receipt of special nuclear material in the form of fuel assemblies. Approval of this exemption would allow VEGP Units 3 and 4 to delay implementation of the requirements of an FFD program that meets all FFD requirements, except for certain FFD requirements for construction, until a point before each unit's initial fuel load into the reactor.

DATES: The exemption was issued on December 21, 2021.

ADDRESSES: Please refer to Docket ID **NRC-2008-0252** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to https://www.regulations.gov and search for Docket ID **NRC-2008-0252**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email:

Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at https://www.nrc.gov/reading-rm/adams.html. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the exemption was submitted by letters dated November 5 and 12, 2021, and are available in ADAMS under Package Accession Nos. ML21309A545 and ML21316A254, respectively.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5848; email: Bill.Gleaves@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

SNC, Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia are the holders of facility COL Nos. NFP-91 and NPF-92, which authorize the construction and operation of VEGP Units 3 and 4. The facilities consist of two Westinghouse Electric Company (Westinghouse) AP1000 pressurized-water

reactors located in Burke County, Georgia. The licenses are subject to the rules, regulations, and orders of the NRC.

Title 10 of the *Code of Federal Regulations* (10 CFR) paragraph 52.79(a)(44) requires a COL applicant, including for VEGP Units 3 and 4, to include in its final safety analysis report a description of its FFD program required by 10 CFR part 26 and its implementation. For VEGP Units 3 and 4, the NRC approved SNC's description of the FFD program and its implementation when it issued the COLs.

As discussed in more detail later, 10 CFR part 26 establishes FFD requirements for construction that are less rigorous than the FFD requirements for operation. Section 26.3(a) specifies when a licensee is subject to the more rigorous operational FFD requirements, while 10 CFR 26.3(c) specifies when a licensee is subject to the less rigorous construction FFD requirements. SNC's requested exemption from certain milestones in 10 CFR 26.3(a) and (c) seeks to extend the applicability of the construction FFD requirements and to delay implementation of the operational FFD requirements until a point before initial fuel load. Initial fuel load is the first step in licensed operational activities for VEGP Units 3 and 4; initial fuel load is also the point at which radiological consequences can increase.

Sections 26.3(a) and (c) broadly address the applicability of FFD requirements to COL holders. Section 26.4 builds on this by specifying particular FFD requirements for categories of individuals based on their roles (e.g., performing security duties) or the presence of specified conditions (e.g., a nuclear power reactor protected area has been established). In doing this, 10 CFR 26.4 also references the licensees and other entities in 10 CFR 26.3. For example, 10 CFR 26.4(a) applies to "licensees in § 26.3(a) and, as applicable, (c)."

SNC is not seeking an exemption from any part of 10 CFR 26.4. SNC's requested exemption is limited to certain milestones in 10 CFR 26.3(a) and (c). Because the requirements of 10 CFR 26.4(a), (b), (c), and (g) can apply to licensees identified in § 26.3(a) or 26.3(c), SNC's exemption request does not affect how 10 CFR

26.4(a), (b), (c), and (g) would apply to VEGP Units 3 and 4. However, 10 CFR 26.4(e) applies only to licensees and other entities identified in 10 CFR 26.3(c). Also, as discussed later in this notice, 10 CFR 26.4(f) allows a licensee or other entity to implement the construction FFD provisions in 10 CFR part 26, subpart K, and these provisions are applicable only to a COL holder subject to 10 CFR 26.3(c), not 10 CFR 26.3(a). Thus, SNC's exemption request would extend the FFD requirements applicable to the categories of individuals specified in 10 CFR 26.4(e) and (f) to before initial fuel load, and the staff's evaluation focuses on these regulatory provisions.

For COL holders under 10 CFR part 52, their FFD program implemented during construction must either: (1) implement all requirements in 10 CFR part 26, except for the requirements in subparts I, "Managing Fatigue," and K, "FFD Program for Construction," for those individuals identified in 10 CFR 26.4(e) and (f); or (2) implement two FFD programs, one that implements all 10 CFR part 26 requirements, except for those requirements in subparts I and K, for those individuals identified in 10 CFR 26.4(e), and a second program that implements the requirements in 10 CFR part 26, subpart K, for those individuals identified in 10 CFR 26.4(f). SNC has elected to implement the latter approach – implementation of two FFD programs.

As required by 10 CFR part 26, SNC implemented its construction FFD programs prior to commencing construction activities. "Construction activities" is defined in 10 CFR 26.5, "Definitions," as "the tasks involved in building a nuclear power plant that are performed at the location where the nuclear power plant will be constructed and operated. These tasks include fabricating, erecting, integrating, and testing safety- and security-related SSCs [structures, systems, or components], and the installation of their foundations, including the placement of concrete." The construction FFD program requirements apply to the construction of the VEGP Units 3 and 4 facility as detailed in 10 CFR 26.3, "Scope." Section 26.3(c) states that "[b]efore the receipt of special nuclear material in the form of fuel assemblies, the following licensees and other entities shall comply with the requirements of this part, except for subpart I of this part; and, no later

than the receipt of special nuclear material in the form of fuel assemblies, the following licensees and other entities shall comply with the requirements in this part . . .” Paragraph (c)(2) of this section lists “[c]ombined license holders (under Part 52 of this chapter) before the Commission has made the finding under § 52.103(g).” The 10 CFR 52.103(g) finding is a finding by the Commission that all the acceptance criteria in the COL are met, except for those acceptance criteria that the Commission found were met under 10 CFR 52.97(a)(2).[1] After the 10 CFR 52.103(g) finding the licensee may begin operation, including loading fuel, in accordance with the conditions of the license. The NRC has not yet made the 10 CFR 52.103(g) finding for VEGP Units 3 and 4, so the 10 CFR part 26 requirements specified in 10 CFR 26.3(c) currently apply to VEGP Units 3 and 4.

During construction, the FFD programs at VEGP Units 3 and 4 must apply to individuals who have certain roles and responsibilities (i.e., perform or direct certain activities) that have been determined to be important to the construction of an NRC-licensed nuclear power facility. Section 26.4 lists those categories of individuals subject to an FFD program. For example, 10 CFR 26.4(e) states that “[w]hen construction activities begin, any individual whose duties for the licensees and other entities in § 26.3(c) require him or her to have the following types of access or perform the following activities at the location where the nuclear power plant will be constructed and operated shall be subject to an FFD program that meets all of the requirements of this part, except subparts I and K of this part.” Paragraph (e) includes, as relevant to this exemption for VEGP Units 3 and 4, those individuals who: (1) “serve as security personnel required by the NRC, until the licensees or other entities receive special nuclear material in the form of fuel assemblies, at which time individuals who serve as security personnel required by the NRC must meet the requirements applicable to security personnel in paragraph (a)(5) of this section;” (2) perform quality assurance (QA), quality control (QC), or quality verification (QV) activities related to safety- or security-related construction activities; (3)

[1] These acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) in the COL.

witnesses or determines inspections, tests, and analyses certification required under 10 CFR part 52; or (4) supervises or manages the construction of safety- or security-related SSCs. Also, 10 CFR 26.4(f) states that "[a]ny individual who is constructing or directing the construction of safety- or security-related SSCs shall be subject to an FFD program that meets the requirements of subpart K of this part, unless the licensee or other entity subjects these individuals to an FFD program that meets all of the requirements of this part, except for subparts I and K of this part."

With respect to operation, a more robust set of 10 CFR part 26 requirements must be implemented for all site workers who are granted unescorted access to the protected area because the radiological risk consequences associated with irradiated nuclear fuel are significantly greater than unirradiated fuel. The regulatory milestones defining this transition are provided in 10 CFR 26.3(a). This paragraph states, in pertinent part, that "holders of a COL under 10 CFR part 52 after the Commission has made the finding under 10 CFR 52.103(g) shall comply with the requirements of this part, except for subpart K of this part" and "holders of a COL under 10 CFR part 52 after the Commission has made the finding under 10 CFR 52.103(g) shall implement the FFD program before the receipt of special nuclear material in the form of fuel assemblies."

As of the dates of its request for exemption, SNC is completing construction activities and readying the VEGP Units 3 and 4 facilities for operation. The principal near-term milestone SNC intends to achieve is completing all activities necessary to enable the Commission to make a finding under 10 CFR 52.103(g) after which the licensee is authorized to operate the facility, including loading fuel, in accordance with the terms and conditions of the license.

II. Request/Action

Pursuant to 10 CFR 26.9, "Specific exemptions," by letter dated November 5, 2021 (ADAMS Package Accession No. ML21309A545), as supplemented by letter dated November 12, 2021 (ADAMS Package Accession No. ML21316A254), SNC requested a schedular exemption from the requirements of 10 CFR 26.3(a) to allow

SNC to begin implementing an FFD program that meets all 10 CFR part 26 requirements, except for those requirements in subpart K, for each unit, at a point after the Commission makes its finding under 10 CFR 52.103(g) and prior to the start of that unit's initial fuel load into the reactor, and a schedular exemption from 10 CFR 26.3(c)(2) to allow SNC to implement the construction FFD program after the 10 CFR 52.103(g) finding for each unit and before the start of that unit's initial fuel load into the reactor.

Paragraph 26.3(a) states, in part, that holders of a COL under 10 CFR part 52 after the Commission has made the finding under 10 CFR 52.103(g) shall comply with the requirements of 10 CFR part 26, except for subpart K. Paragraph 26.3(a) also states that COL holders after the 10 CFR 52.103(g) finding shall implement the FFD program before the receipt of special nuclear material (SNM) in the form of fuel assemblies. In the section-by-section analysis for the 2008 final rule establishing the 10 CFR 26.3(a) requirements (73 FR 16997; March 31, 2008), the NRC clarified that subpart K does not apply to the licensees and other entities specified in 10 CFR 26.3(a) because only entities specified in 10 CFR 26.3(c) are permitted to implement an FFD program under the more flexible requirements in subpart K. The NRC analysis for the 2008 final rule explained the implementation requirement in 10 CFR 26.3(a) by stating that "once fuel assemblies have arrived on site, the full range of potential risks to public health and safety and the common defense and security that Part 26 is designed to avert are possible. Therefore, the NRC believes that a more rigorous FFD program must be in place at this time."

This statement associating the "full range of potential risks" with the arrival of fuel assemblies onsite was made in the context of explaining the implementation provision in 10 CFR 26.3(a), which applies to a COL holder only after the 10 CFR 52.103(g) finding has been made. The FFD regulations also address receipt of fuel assemblies onsite before the 10 CFR 52.103(g) finding. Specifically, 10 CFR 26.3(c) allows the more flexible subpart K requirements to apply to COL holders before the 10 CFR 52.103(g) finding, even when fuel assemblies have been received onsite. Thus, it is not the receipt

of fuel assemblies in isolation that subjects a COL holder to the more rigorous FFD requirements. Rather, it is the presence of fuel assemblies onsite after the 10 CFR 52.103(g) finding is made that subjects a COL holder to the more rigorous FFD requirements. Because the 10 CFR 52.103(g) finding has the effect of allowing a COL holder to load fuel in accordance with the conditions of the license, it is apparent that the Commission's purpose was to ensure that the more rigorous FFD requirements were implemented before initial fuel load. This makes sense because the radiological risk associated with irradiated nuclear fuel is significantly greater than that associated with unirradiated fuel. The Commission accomplished its purpose by tying the implementation of the more rigorous FFD requirements to an NRC finding having the effect of allowing fuel load in coincidence with the presence onsite of unirradiated fuel that could then be loaded into the reactor. However, while a COL holder might immediately load unirradiated fuel into the reactor upon receipt of the 10 CFR 52.103(g) finding, SNC has submitted its exemption request to address an anticipated period of time between the 10 CFR 52.103(g) finding and initial fuel load for VEGP Units 3 and 4.

III. Discussion

Pursuant to 10 CFR 26.9, "Specific exemptions," "[u]pon application of any interested person or on its own initiative, the Commission may grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest."

A. The Exemption Is Authorized by Law

A proposed exemption under 10 CFR 26.9 is authorized by law if it will not endanger life or property or the common defense and security and is otherwise in the public interest, and no other provisions in law prohibit, or otherwise restrict, its application. The NRC has reviewed the exemption request and finds that granting the proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. As discussed later, the NRC also finds that the other

requirements for an exemption under 10 CFR 26.9 are met. Accordingly, the NRC finds that the exemption is authorized by law.

B. The Exemption will not Endanger Life or Property

The exemption from the 10 CFR 26.3(a) and (c)(2) requirements would allow SNC to continue to be subject to 10 CFR 26.3(c), and not be subject to 10 CFR 26.3(a), until a point prior to initial fuel load into the reactor. SNC stated that the "proposed exemption does not introduce any new industrial, chemical, or radiological hazards that would present a public health or safety risk, nor does it modify or remove any design or operational controls, or safeguards intended to mitigate any existing on-site hazards." Furthermore, the licensee stated that the "proposed exemption would not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that would result in fuel cladding failures. Accordingly, this proposed exemption does not present an undue risk from any existing or proposed equipment or systems."

The schedular exemption does not request any relaxation in the FFD program requirements in 10 CFR part 26, subpart K, as applied to those categories of individuals described in 10 CFR 26.4(f), nor does it request relaxation of those 10 CFR part 26 requirements applicable to the categories of individuals identified in 10 CFR 26.4(e). The exemption has the effect of extending the applicability of 10 CFR 26.4(e) and (f) for a period during the interval between the 10 CFR 52.103(g) finding and initial fuel load for each unit. Based on the explanation earlier in this document, the staff concludes that delaying implementation of the more rigorous FFD requirements to a point before initial fuel load is consistent with the underlying purpose of the rule. Therefore, the licensee's FFD program will continue to provide reasonable assurance that individuals under 10 CFR 26.4(e) and (f) are trustworthy and reliable as demonstrated by the avoidance of substance abuse and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties. Also, the FFD program will

continue to provide reasonable assurance that measures are implemented for the early detection of individuals who are not fit to perform the duties that require them to be subject to the FFD program and that the workplaces subject to 10 CFR part 26 are free from the presence and effects of illegal drugs and alcohol. Accordingly, the NRC finds that the exemption will not endanger life or property.

C. The Exemption Will Not Endanger the Common Defense and Security

The schedular exemption from the 10 CFR 26.3(a) and (c)(2) requirements would allow SNC to continue to be subject to 10 CFR 26.3(c), and not be subject to 10 CFR 26.3(a), until a point prior to initial fuel load into the reactor. The licensee stated that "during the window between the 10 CFR 52.103(g) finding and initial fuel loading into the reactor safety and security risks, as well as radiological consequences, associated with unirradiated nuclear fuel have not increased since the fuel assemblies on-site continue to remain outside the reactor vessel." SNC also stated that "[d]uring the period between the 10 CFR 52.103(g) finding milestone and the milestone of commencing fuel loading into the reactor vessel, portions of SNC's NRC-approved Physical Security Plan are implemented as required to provide the necessary protection for the common defense and security."

The unirradiated nuclear fuel to be used at VEGP Units 3 and 4 is a Category III quantity of SNM. Because of the low enrichment of this type of SNM, the unirradiated reactor fuel poses no significant risk to public health and safety and would not be inimical to the common defense and security – this remains true both in dry storage and during movement to a different dry location on-site (e.g., an unirradiated "new" fuel assembly inspection stand). Without irradiated fuel there can be no significant risk to the public health and safety due to core damage or spent fuel sabotage.

Safety and security risks begin to increase when unirradiated nuclear fuel is placed in a configuration and environment that enables reactor operation. There is also some operational risk if unirradiated nuclear fuel is moved from dry storage to wet storage, but this risk is mitigated by physical protection, security, operator training and

qualification, and the safety-related and security-related SSCs designed to provide for safe wet storage of unirradiated fuel. The licensee is prohibited from loading fuel in the reactor to commence operation until after the Commission's finding under 10 CFR 52.103(g), and this finding is dependent on licensee completion of ITAAC for safety- and security-related SSCs.

As discussed in an NRC exemption issued for VEGP Units 3 and 4, dated November 29, 2021, and published at 86 FR 67734, after the 10 CFR 52.103(g) finding and before initial loading of fuel into the reactor, SNM in the form of nuclear fuel assemblies will continue to be stored in a controlled access area and protected in accordance with the requirements of SNC's NRC-approved 10 CFR 73.67 special nuclear material physical protection program. Prior to moving fuel outside the controlled access area (i.e., from the auxiliary building to containment in support of fuel load), the requirements of 10 CFR 73.55 physical protection and 10 CFR 73.56 access authorization programs will be implemented.

The exemption does not remove or relax any requirement for the design, construction, inspection, test, acceptance, maintenance, or operation of a physical protection system which will have capabilities for the protection of SNM at this fixed site and in transit or any safeguards system designed to protect against acts of radiological sabotage. Specifically, the exemption does not change the physical protection systems designed to detect, delay, and mitigate the threat or protect sensitive information or safety- or security-related SSCs, nor will the exemption relax the safeguarding of sensitive information. The exemption also does not alter the design, function, or operation of any safety-related SSC that is necessary to maintain a safe and secure status of the plant. Further, the exemption does not alter or otherwise invalidate any ITAAC closure notifications, which would have been submitted to, and accepted by, the NRC staff in advance of the Commission's 10 CFR 52.103(g) finding.

Changing the 10 CFR 26.3(a) and (c)(2) FFD program implementation milestones to before initial fuel load into the reactor would not endanger the common

defense and security principally because SNC's proposal does not result in a change that diminishes the physical protection plans, policies, procedures, or security-related SSCs or programs at the site. Accordingly, the NRC finds that the exemption will not endanger the common defense and security.

D. The Exemption Is Otherwise in the Public Interest

In its letters dated November 5 and 12, 2021, SNC stated, in part, that the public has an interest in the efficient execution of regulatory activities. Specifically, the licensee stated that "[r]equiring construction workers under subpart K to meet alternate and additional 10 CFR part 26 requirements to continue working after the 10 CFR 52.103(g) finding would impose an unnecessary burden on both the construction workers and the administrative staff due to the additional work needed to meet the appropriate elements of 10 CFR part 26 subpart B (i.e., beyond the portions addressed in subpart K) and subpart C. This would ultimately result in additional cost and loss of efficiency." Further, SNC stated that "during the window between the 10 CFR 52.103(g) finding and initial fuel loading into the reactor vessel[,] safety and security risks, as well as radiological consequences, associated with unirradiated nuclear fuel have not increased since the fuel assemblies on-site continue to remain outside the reactor vessel. There is also a significant reduction in the number, type, and complexity of construction activities being performed since the 10 CFR 52.103(g) finding reflects completion of all ITAAC."

The NRC has established a risk-informed FFD regulatory framework. Its requirements are applied to licensees and other entities commensurate with the safety or security significance of the construction, operation, maintenance, surveillance, or QA activities being conducted at any NRC-licensed facility that is subject to 10 CFR part 26. This is demonstrated by the FFD requirements in subpart K that are applicable to those categories of individuals in 10 CFR 26.4(f) who construct or direct the construction of safety- or security-related SSCs, and the FFD requirements in subparts A – H, N, and O that are applicable to those categories of individuals in 10 CFR 26.4(e). Also, as explained previously, the Commission's apparent purpose in establishing the

implementation milestone in 10 CFR 26.3(a) was to ensure that the more rigorous FFD requirements for operation would be implemented after the Commission's 10 CFR 52.103(g) finding and before initial fuel load. While a licensee may load fuel upon receipt of the 10 CFR 52.103(g) finding, SNC anticipates that there will be a period of time between the 10 CFR 52.103(g) finding and initial fuel load for VEGP Units 3 and 4. Thus, delaying implementation of the more rigorous FFD requirements for operation for each unit to a point before initial fuel load for that unit addresses the specific circumstances of VEGP Units 3 and 4 and is consistent with the underlying purpose of the rule.

Further, based on operating experience and associated insights learned from the construction of VEGP Units 3 and 4 and Virgil C. Summer Units 2 and 3, the NRC staff reassessed the risks presented during the construction of nuclear power reactors and determined that the radiological consequences associated with unirradiated nuclear fuel have not increased during the period between the 10 CFR 52.103(g) finding and initial fuel load since the fuel assemblies stored on-site continue to remain outside the reactor. This NRC staff determination is in the NRC staff's regulatory basis for public comment titled, "Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing," dated January 15, 2021 (ADAMS Accession No. ML20149K680). Although the NRC has not yet changed its regulations based on this regulatory basis for public comment, the determination therein is consistent with the conclusions stated previously.

The NRC has determined that approval of the exemption would contribute to regulatory efficiency in that the licensee's construction workforce would not be unnecessarily subject to an FFD program that meets all 10 CFR part 26 requirements, except for those requirements in subpart K, until initial fuel load into the reactor. In accordance with the discussion of "Efficiency" in the NRC's Principles of Good Regulation, "[r]egulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted." Granting the requested exemption

is in the public interest, in part, because it will result in FFD requirements that are consistent with the degree of risk reduction achieved and it avoids the use of licensee resources, in comparison with the FFD requirements that would apply if the exemption were not granted, in an instance where the additional use of resources would not result in an additional benefit to safety. Granting the exemption helps reduce licensee and NRC costs and focuses licensee effort on activities that contribute to safely completing construction and transitioning to reactor operation.

Currently, the licensee is, in part, manufacturing, fabricating, placing, erecting, installing, and modifying SSCs needed for power reactor operation. These SSCs may either be safety- or security-related or not. The SNC-proposed exemption would apply to these types of construction activities and apply to those individuals identified in 10 CFR 26.4(f), who are subject to an FFD program that meets the requirements of 10 CFR part 26, subpart K. With approval of this exemption, the licensee may maintain this subpart K FFD program until a point before initial fuel load into the reactor. Based on operating experience and NRC oversight, there is no change in the conduct of construction activities being performed by those individuals identified in 10 CFR 26.4(f) that would warrant the implementation of an FFD program that meets all 10 CFR part 26 requirements, except for those in subpart K. This conclusion aligns with SNC statements that construction activities being performed after the Commission's 10 CFR 52.103(g) finding are expected to include construction activities, "such as finalizing non-ITAAC related portions of the plant, paving of roads, moving trailers and temporary structures, etc."

Currently, SNC is also implementing QA, QC, QV, and ITAAC closure activities to provide assurance that SSCs can meet their intended design and safety and security functions to support reactor operation. These activities are subject to 10 CFR 26.4(e) and separate from the construction activities subject to 10 CFR 26.4(f) that are described in the preceding paragraph. These QA, QC, QV, and ITAAC closure activities are of a higher importance because they provide defense-in-depth in assuring that the

SSCs will perform their intended function(s). For example, prior to declaring that safety-related systems (such as the shield building and passive residual heat removal heat exchanger) are ready to support reactor operation, SNC will implement and complete, in part, applicable tests as identified in its initial test program and assigned ITAAC. A similar defense-in-depth strategy is provided for security-related systems, such as the protected area boundary and intrusion detection system, required by 10 CFR 73.55. These individuals and others described in 10 CFR 26.4(e) are subject to all 10 CFR part 26 requirements, except those in subparts I and K.[2] With the approval of this exemption, the licensee will maintain this FFD program until initial fuel load into the reactor. Based on operating experience and continuous NRC oversight, there is no change in the conduct of activities being performed by the individuals in 10 CFR 26.4(e) that would warrant the implementation of an FFD program that meets all part 26 requirements, except for those in subpart K. In summary, until a point before the initial loading of fuel into the reactor for each unit, the licensee will continue to implement its FFD programs as required by the regulations, construction activities will not significantly change in a manner that warrants a more robust FFD program, and the radiological risk profile at the site will not change.

If the NRC were to disapprove the requested exemption, SNC would be required to transition their construction site workforce described in 10 CFR 26.4(f) into an FFD program that would include the requirements in 10 CFR part 26, subpart B, “Program Elements;” subpart C, “Granting and Maintaining Authorization;” and subpart I, “Managing Fatigue.” Additionally, the individuals described in 10 CFR 26.4(e), who are already subject to subparts B and C, would be subject to subpart I. Implementation of these subparts would not be based on the current risk profile presented at VEGP Units 3 and 4. Furthermore, the implementation of these requirements would be costly and burdensome on the licensee. This cost and burden would occur because the licensee

[2] Except that, once the licensee receives fuel assemblies, 10 CFR 26.4(e)(1) provides that security personnel required by the NRC must meet the requirements applicable to security personnel identified in 10 CFR 26.4(a)(5).

would be required, in part, to: develop and maintain a prescriptive FFD policy, procedure, and training and auditing program; collect and evaluate an individual's employment history and self-disclosure of potentially disqualifying information; and implement a prescriptive fatigue management program.

Therefore, the cost and burden to implement an FFD program that meets all 10 CFR part 26 requirements, except those requirements in subpart K, is not justified, and granting the exemption is consistent with the NRC's Principles of Good Regulation.

Based on the foregoing, the NRC finds that the exemption is otherwise in the public interest.

E. Environmental Considerations

As discussed later, the NRC has determined that granting this exemption from the requirements of 10 CFR 26.3(a) and 10 CFR 26.3(c)(2) meets the criteria for a categorical exclusion in 10 CFR 51.22(c)(25) because (i) there is no significant hazards consideration, (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure, (iv) there is no significant construction impact, (v) there is no significant increase in the potential for or consequences from radiological accidents, and (vi) the exemption is from scheduling requirements.

The granting of this exemption involves no significant hazards consideration (as defined by 10 CFR 50.92(c)) because:

- The exemption does not alter the design, function, or operation of any plant equipment; therefore, granting the exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated.

- The exemption does not alter the design, function, or operation of any plant equipment or create any new failure mechanisms, malfunctions, or accident initiators. Therefore, granting the exemption would not create the possibility of a new or different kind of accident from any accident previously evaluated.

- The exemption does not adversely affect any SSC, SSC design function, or method of performing or controlling a design function. The exemption does not affect safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit or criterion is challenged or exceeded by the exemption. Therefore, granting the exemption would not involve a significant reduction in a margin of safety.

- The requested exemption does not alter the design, function, or operation of any plant equipment, and there are no changes to effluent types, plant radiological or non-radiological effluent release quantities, any effluent release path, or the functionality of any design or operational features credited with controlling the release of effluents during plant operation or construction. Therefore, the proposed exemption does not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

- There are no changes to plant radiation zones, nor any change to controls required under 10 CFR part 20 that preclude a significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the proposed exemption does not involve a significant increase in individual or cumulative public or occupational radiation exposure.

- The requested exemption does not alter the materials or methods for constructing or testing of any SSCs, and there is no change to the design or construction of the facility that is being made as a result of this exemption. Therefore, the proposed exemption does not involve a significant construction impact.

Finally, the NRC determined, per 10 CFR 51.22(c)(25)(vi)(G), that the requirements from which the exemption is sought involve scheduling requirements because 10 CFR 26.3(a) and 10 CFR 26.3(c)(2) govern when the requirements of 10 CFR part 26 must be implemented. Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with granting the requested exemption.

F. Granting of Exemption

For the reasons stated previously, the Commission is granting the following exemption for VEGP Units 3 and 4 because it has determined that, pursuant to 10 CFR 26.9, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest:

- Effective immediately, the Commission hereby grants SNC an exemption for VEGP Unit 3 from the schedule requirements of 10 CFR 26.3(a) and 10 CFR 26.3(c)(2) to allow SNC to begin implementing an FFD program that meets all requirements in 10 CFR part 26, except those requirements in subpart K, at a point after the Commission makes its finding under 10 CFR 52.103(g) for Unit 3 and prior to the start of Unit 3's initial fuel load into the reactor. This would allow SNC to continue implementation of its construction FFD program for those individuals in 10 CFR 26.4(e) and (f) after the Commission makes its finding under 10 CFR 52.103(g) and prior to the start of Unit 3's initial fuel load into the reactor. The exemption for VEGP Unit 3 expires when SNC begins implementing the requirements of 10 CFR part 26 for VEGP Unit 3, except for the requirements in subpart K, which must occur before initial fuel load for VEGP Unit 3.

- Effective immediately, the Commission hereby grants SNC an exemption for VEGP Unit 4 from the schedule requirements of 10 CFR 26.3(a) and 10 CFR 26.3(c)(2) to allow SNC to begin implementing an FFD program that meets all requirements in 10 CFR part 26, except for the requirements in subpart K, at a point after the Commission makes its finding under 10 CFR 52.103(g) for Unit 4 and prior to the start of Unit 4's initial fuel load into the reactor. This would allow SNC to continue implementation of its construction FFD program for those individuals in 10 CFR 26.4(e) and (f) after the Commission makes its finding under 10 CFR 52.103(g) and prior to the start of Unit 4's initial fuel load into the reactor. The exemption for VEGP Unit 4 expires when SNC begins implementing the requirements of 10 CFR part 26 for VEGP Unit 4, except for the requirements in subpart K, which must occur before initial fuel load for VEGP Unit 4.

Dated: December 21, 2021.

For the Nuclear Regulatory Commission.

Gregory T. Bowman, Director,
Vogtle Project Office,
Office of Nuclear Reactor Regulation.

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